REMARKS

The Office Action of May 19, 2005, has been received and considered. Applicant appreciates that the election of species has been withdrawn and that claims 4, 6-10, 15, 19-29, 32-34 and 36-42 have been indicated as being allowed or containing allowable subject matter. Claims 1, 9-10, 15-18, 20, 32-33 and 42 have been amended, claims 43-48 added, and claims 2, 11-14, 30-31, 34 and 35 have been canceled. Reconsideration of the application as amended is requested.

Applicant appreciates the indication that claims 10, 22-29 and 36-42 are allowed and that claims 4, 6-9, 15, 19-21 and 32-34 are allowable if rewritten in independent form to include the limitations of the claim(s) from which they depend.

Claim 17 was rejected under 35 USC 112 for lacking antecedent basis for "the rigid part." This claim has been amended to depend from claim 16, which recites "a rigid part." Accordingly, withdrawal of this rejection is requested.

The claims not allowed have been rejected under 35 USC 102 as being anticipated by US Patent No. 6,108,950 to Ruvang et al. ("Ruvang"). Ruvang, however, discloses a different lock that is designed for a different purpose and requires different spacing requirements in the assembly to operate.

In regard to claim 1, Ruvang is concerned with applying a biasing force against the tooth point to continually tighten the fit of the point on the nose. Accordingly, the flange section 80 is biased with a spring 36 that axially expands the lock to drive the wedge-shaped connector member 34 farther into the hole to tighten the assembly.

The present lock is designed to have a constant axial length and to hold the wear member to the base free of substantial axial pressure. As a result, the space requirements for the lock and the use the lock are markedly different as compared to Ruvang. Claim 1 recites: "the body and the locking member cooperatively defining an axial depth that is the same in each of the release and locking positions so as to position the lock in each said hole when the lock is installed in the opening free of substantial axial pressure." This is a construction that is not disclosed by Ruvang and is contrary to its purpose.

Similarly, new claim 44 recites a wear assembly having a lock with a constant axial depth so as to be free of substantial axial pressure when installed in the wear assembly. The lock fits within an outline shape of the opening to permit installation in the opening defined in the wear assembly in one orientation, and extends partially outside the outline shape to hold the wear member to the base when the lock is rotated to a second orientation. Ruvang does not disclose this construction.

Claims 3-9 and 45-46 depend from claim 1 and 44, respectively, and are believed to be allowable for the same reasons as claim 1.

Claims 10 and 42 were indicated as being allowed. The word "substantially" has been inserted to cover minor variations in the extension of the rear portion of the bearing face. It is believed that these claims are still allowable.

Claim 15 was indicated as being allowable if rewritten to contain the limitations of the claims from which it depends. While Applicant has not included all of the limitations from claims 11 and 14 into the claim, it is still believed to be allowable over the prior art. Claim 15 recites a lock including a body and a locking

member wherein the locking member moves between a locking position and a release position. The locking member has a shank with a non-circular cross section that is received into a hole formed in a resilient part of the body. The resilient part is generally relaxed when the locking member is in the release and locking positions, but stretched when the locking member is moving between these two positions.

Ruvang has no such construction. In the Ruvang lock, the force exerting member 38 includes a cylindrical body 70 that engages spring 36. The cylindrical body, however, does not form a "non-circular" cross section. Moreover, the spring is not in a relaxed state in the release and locking positions and in a stretched state as the body rotates between the two positions. The Ruvang spring 36 is compressed or relaxed depending on the axial translation of body 70 in passage 56.

Claims 16-19 and 43 depend from claim 15 and are believed to be allowable for the same reasons as claim 15.

Claims 20 and 32 were indicated as being allowable if rewritten to include the limitations of claim(s) from which they each depend. These amendments have been made. Claim 21 depends from claim 20 and believed allowable for the same reasons.

Claim 33 was indicated as being allowable if rewritten in independent form to include the limitations from the claim from which it depends. Claim 33 has been written in independent form with some of the limitations from now canceled claims 30 and 34.

Claims 33 and 48 each recites a lock that includes two bearing surfaces that face in opposite directions – one bearing surface is formed on the body and the other

bearing surface is formed on the locking member. The locking member is moved to expand the distance between the bearings surfaces so that the bearings surfaces press against the wear member and the mounting portion of the excavator to tighten the fit of the wear member on the excavator. While the Ruvang lock functions to tighten the fit of the wear member onto the nose, it does not do so in the same way as the present invention.

Claims 33 and 48 each recites that the bearing surfaces face in opposite directions and that the spacing between the bearing surfaces changes between the release and locking positions. In Ruvang, the outside face of flange 80 is pushed against the inner face of the wear member by spring 36. This movement of flange 80 causes the wedge-shaped connector member 34 to be pressed farther into the opening. While the outside face of flange 80 may be a bearing surface that engages the wear member and side 44 may be a bearing surface that engages the mounting portion of the excavator, these surfaces do not face in opposite directions as they do in the present invention. Ruvang relies upon an axial pushing by the spring and the wedge shape of the connector member to cause the desired tightening. In the present invention, the locking member is moved to change the spacing between oppositely facing bearing surfaces.

New claim 47 is similar to claims 4 and 15 which were indicated as being allowable. In the preferred embodiment, the locking member is held in the release and locking positions by a polygonal shank that fits within a complementary hole formed in a resilient member. Due to the non-circular shape of the shank and hole,

the shank must stretch the resilient material to move from one position to the other. This is a construction that is wholly unknown in Ruvang.

It is believed that all of the pending claims are allowable. Applicant respectfully requests a notice to this effect.

Respectfully submitted,

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